

## NEGOTIATING THE SPACES: EXPLORING ISSUES OF HUMAN RIGHTS IN AN INDIAN TEXT

Dr Lynn Thomas  
Department of Humanities  
Roehampton University  
Roehampton Lane  
London SW15 5PU

[lynn.thomas@roehampton.ac.uk](mailto:lynn.thomas@roehampton.ac.uk)

### Abstract

This article is an attempt to negotiate the spaces between a number of problematic positions concerning Hinduism and human rights through the close study of one particular text, the *Rājadharmaparvan* of the *Mahābhārata*. By examining safeguards and provisions for subjects articulated in the text's discourse of kingly duty, it engages with some of the arguments forwarded in the theoretical literature on human rights. Here it interrogates, in particular, the idea that Hinduism is distinctively incompatible with these norms in a way other historical or cultural traditions are not. The article concludes by asking whether it is possible to counter Eurocentric tendencies in global debates without furthering illiberal agendas within local ones. Discussing the appropriation of 'Raj dharma,' and the texts that deal with it, by the Hindu Right, it briefly outlines some recent moves in human rights theory that help facilitate the reclamation of a rich and plural textual heritage.

This is an Accepted Manuscript of an article published by Taylor & Francis in RELIGION on 17 October 2017, available at  
<http://dx.doi.org/10.1080/0048721X.2017.1386137>

## Negotiating the spaces: exploring issues of human rights in an Indian text

Relatively little has been written on Hinduism in the theoretical literature on human rights, and most of what has draws largely on the tradition's texts in order to engage with two main areas of debate: human rights and cultural relativism, and attempts to formulate a history of human rights; areas which intersect at a number of important points. Until fairly recently, much of the discussion of cultural relativism (broadly, different perspectives on the relationship between 'universal' human rights and the ethical and social norms of diverse and particular cultures) has been conducted within a paradigm of compatibility, in which existing or historical cultures and traditions are measured against a set of overarching norms and principles encapsulated by the notion of human rights. Within this paradigm, Hinduism has, for the most part, fared badly. The human rights theorist Jack Donnelly, for example, one of the staunchest advocates of this negative evaluation in all but his most recent work, has cited the case of 'traditional Hindu India' as one which made it 'painfully clear' (2003, 84) that fundamental agreement with the principles of human rights could not be found across all cultures. Drawing largely on some of the tradition's social teachings, Donnelly argued that for Hinduism '[e]qual and inalienable human rights held by all members of the species *Homo sapiens*... would be a moral outrage, an affront to and attack on natural order and justice' (2003, 83).

Although it should be noted that Donnelly himself has considerably modified his approach in an extensive revision to the work where this appeared (2013),<sup>1</sup> the idea that Hinduism is fundamentally incompatible with human rights, in a way that distinguishes it from other 'traditional' cultures, still lingers. Indeed, it is sufficiently prevalent that Menski has talked about 'a rabid anti-Hindu stance in global academia' (2012, 80). While this may be overstating the case, Menski's *cri de coeur* will resonate with many living and working in the tradition. Discussions of the history of human rights – or what Baxi, highlighting some of the issues at play, calls their 'originary meta-narratives' (2012, 46) – often fail to include Hindu sources, or do so in a way that gives rise to other problems. Discussions of the 'common consensus,' the fundamental cross-cultural ethical principles underpinning human rights, will again often reference other major religious and intellectual traditions but omit Hinduism; an omission that serves to reinforce the idea that it, distinctively, does not share these values.<sup>2</sup> Donnelly's earlier assertion that Hinduism has no sense of a common humanity (the core of his argument concerning distinctive incompatibility), meanwhile, continues to be repeated in the works of others: Griffin uses it as part of his broader argument that human rights can take root in even historically unpromising environments (2008, 140-2), while Lauren appears to draw on it as an example of a context where 'some people were not regarded as being fully human' (2011, 26-7).<sup>3</sup>

Attempts to counter this, or to engage more comprehensively with the broad spectrum of beliefs and practices subsumed under the label 'Hinduism,' have tended to focus on those areas of the tradition offering more immediate resonance with the vision of human rights: the universalism of the Upaniṣads; the long history of accommodating pluralism and diversity; the sense of interconnectedness implicit in the notions of *dharma* and *karma*.<sup>4</sup> The relative paucity of direct engagement with the societal strands of the tradition in this regard, however, suggests that there is still a sense, even amongst those sympathetic to the need for more culturally plural narratives, that these are unlikely to prove fertile territory. The underlying reasons for this, of course, hardly need spelling out. They have rested, in particular, on the issue of caste: the system of social organisation with which India has grappled for millennia and continues to grapple with today. It is important to acknowledge at the outset that aspects of the caste system, particularly abuses associated with the notion of untouchability, are indeed fundamentally incompatible with human rights, and there is no shortage of internal voices making this point.<sup>5</sup> The problem with Donnelly's original position is not that he identified these aspects as problematic, but that he concentrated on them to the exclusion of all else.

Valuable as a broader sweep of the tradition may be, however, there are compelling reasons why it is precisely within a more contextualised exploration of its discussions of society and polity that the focus needs to be placed. Not only is the charge of incompatibility best interrogated within the side of the tradition that gives rise to it, but too great an emphasis on Hinduism's metaphysical teachings may also, in turn, generate problems of its own; not the least being that it serves to reinforce the stereotype of India as 'spiritual' and 'unworldly,' a monolithic reading of the culture from without forcefully critiqued by Sen yet continuing to colour much of the debate.<sup>6</sup> Always problematic - as Sen says, it sets up a 'pre-selected "East-West" contrast... between Aristotle and Euclid on the one hand, and wise and contented Indian peasants on the other' (2005, xiv) - this stereotype is particularly unhelpful in the context of human rights, where there is a tendency to accord more value to ideas deemed 'secular' than those regarded as 'religious': a tendency which, as Menski notes, fundamentally disadvantages the world's many 'religio-cultural and socio-legal normative systems that are deeply hybrid entities' (2012, 73), such as Hinduism.

The historian John Headley provides a good example of how this disadvantage plays out in the construction of historical narratives for human rights. Forwarding the argument that their key foundational principles are only explored in any depth within the 'complexity and polyphony of the European intellectual context' (2008, 78), he dismisses examples that would counter this, such as those of Akbar and Aśoka from India, as 'disparate, scattered cases, random lights,' continuing 'But where the continuity? the sustained influence? the religiously neutral legal framework?' (2008, 5). Headley's otherwise careful study

is scattered with similar claims: the idea of a common humanity, the acceptance of dissent, even 'the very capacity for self-criticism and review' (2008, 143), are variously cited as 'unique' to the intellectual traditions of Europe; if they emerge elsewhere it is only as 'fleeting, fitful expressions' (2008, 7), 'scattered moments... upon which the Western impetus can attempt to graft itself' (2008, 5).<sup>7</sup> Headley is by no means alone in constructing a largely European pedigree for human rights: explicitly or implicitly it is something that informs the majority of the histories that exist. It is immediately obvious why claims such as this need to be challenged. Not only do they bolster the perception of human rights as, in Baxi's words, 'the gift of the West to the Rest' (2012, 38), with the damaging consequences he goes on to enumerate, they also display an attitude that Sen has elsewhere, rather generously, labelled 'parochial' (2009, xiv).<sup>8</sup> Defensive responses to this attitude have played their part in the development of positions inimical to human rights in a number of post-Colonial contexts. Contesting these claims, therefore, is a necessary prelude to contesting those.

This article will engage with some of these issues through the close study of one particular text, the *Rājadharmaparvan* of the *Mahābhārata*: the section of the longer of India's two great epics that sets out the duties of the king. By considering in some detail the safeguards and provisions for the welfare of subjects that the text articulates within its discourse of kingly duty, it will seek to interrogate both the notion that Hinduism is in some way distinctively incompatible with human rights, and also certain of the broader claims put forward by writers such as Headley. This, the major part of the study, will be structured around two questions. Firstly, to what extent do the safeguards and provisions outlined in the *Rājadharmaparvan* correspond to those afforded by human rights? Is there, at the least, some element of normative agreement between the two? Secondly, and more importantly for these debates, are these norms formulated in a way that is supportive of, or inimical to, the core principles of universality and common humanity upon which human rights are founded?

As the title suggests, however, it is also an attempt to negotiate the spaces. Although the primary focus will be to contest the validity of these claims, the final section will address a rather different set of questions: Is it possible to draw on a tradition's texts to counter Eurocentric tendencies in global debates without unwittingly supporting illiberal agendas within local ones? To what extent are the two related? What approaches might enable one to step away from problematic positions in one direction without ending up with uneasy bedfellows in the other? These questions are particularly acute within the political landscape of contemporary India, where it is these same texts on which those espousing the ideology of Hindu Nationalism have drawn in order to motivate and justify abuse. The article will conclude by briefly outlining some of the more recent

trends in human rights theory that might prove helpful to this difficult process of negotiation.

#### The text

The *Mahābhārata's Rājadharmaparvan* ('The Section Pertaining to the Duties of the King') is one of several classical Indian discourses on polity dating back to the first few centuries BCE, and it has been chosen as the focus of this study for several reasons. Firstly, it has been rather less discussed in relation to human rights than others, such as the *Manusmṛiti* ('The Laws of Manu'), Kautilya's *Arthaśāstra* and the Edicts of Aśoka.<sup>9</sup> Although the *Rājadharmaparvan* shows considerable overlap and inter-textual engagement with these, as well as sharing some of the historical contexts that gave rise to them, its tone and setting is rather different. Secondly, it is part of a longer work that is widely recognised and authoritative. One of the major sacred texts of Hinduism, as well as an important cultural resource for India more broadly, the *Mahābhārata* has a popularity and relevance that endures today; Gurcharan Das's recent use of it as a framework for exploring contemporary issues (2009) is one of the many examples of this. Anything found within it, therefore, cannot easily be dismissed as either 'scattered' or 'fleeting'; it will represent the centrality and continuity of concern critical to the kind of claim that Headley is making. Moreover, the *Mahābhārata* as a whole is notoriously multivocal. Containing voices debating vigorously over a broad range of topics and drawing on multiple strands of Indian thought in the process, it provides a particularly rich environment for listening in on contestation and debate; something crucial for countering monolithic claims from any quarter.

Within this vast epic, the *Rājadharmaparvan* falls more obviously on the side of the tradition's social teachings. Setting out the ruler's duties towards his people and the people's expectations of their ruler, it constitutes a forerunner of later attempts to conceptualise the relationship between the state and the individual. At the same time, however, it challenges any easy division into 'religious' and 'secular' by firmly situating the king's responsibility to provide systems of governance (a 'secular' concern) within the broader universe of *dharma*: the complex 'religious' notion of social, spiritual and cosmic well-being, of which the king's own *dharma* (here more readily translated as 'duty') is just one part. Although staying within the confines of the *Rājadharmaparvan* sets up a rather arbitrary division between models and narratives of kingship found across the spread of both Indian epics, it also usefully delimits an arena in which the issues can be explored in depth. Finally, in a political climate within India where, as Veena Das has noted, 'to inherit any Hindu texts ha[s] become a very difficult task' (2012, xi), this is a topic and a text that has been particularly compromised: Gurcharan Das's description of the horror of his secular friends when he proposes studying the *Mahābhārata* is testament to that (2009, xxxv).<sup>10</sup>

Anything it contains for contesting the exclusionary 'saffronisation' of a rich and plural textual tradition will therefore be especially valuable.

Before turning to the text itself, it will be helpful to briefly consider what one might reasonably expect to find there. It is worth stating at the outset that this will not include evidence of actual human rights: these form a framework for ethical discourse that is essentially a product of the modern world, as most theorists would agree. However, this framework is composite: it brings together a 'bundle' of different elements which can be disaggregated into its constituent parts in a way that is particularly useful for those seeking to further cross-cultural debate.<sup>11</sup> Some of these elements, especially the use of the language of rights as a way of articulating norms and values, are unlikely to be found in any pre-modern intellectual tradition. This means that ideas contained in the *Rājadharmaparvan*, as in any text of its age, whatever its cultural background, are likely to be expressed as duties towards others (specifically the duties of the king towards his subjects, as the title suggests), rather than set out as rights to be claimed.<sup>12</sup>

Other elements, however, could still be sought within the confines of this discourse; particularly those concerning the substance of human rights: the safeguards for human dignity and welfare they enshrine. These would include, most crucially, provision for a fair and open legal system; freedom from arbitrary imprisonment or death; freedom to own property; freedom of movement, belief and expression; protection for the individual from harm by others. They could also include some of the areas covered by 'positive rights' - support for the needy and vulnerable; the fostering of an environment where people can thrive and prosper – as well as safeguards for human dignity and welfare in times of war. Some of the fundamental principles underlying human rights might also be looked for, although again expressed rather differently and stripped of features pertaining to the modern age. These could include the principle of universality – that these safeguards are open to all, 'without distinction of any kind,' in the words of the Universal Declaration; as well as the sense of an underlying common humanity: the idea that 'all members of *Homo sapiens* are in some important sense equally human beings,' as Donnelly puts it (2013, 70). Finally, it is worth reiterating that, as is the case with any of the historical sources usually cited as 'foundational,' up to and including the American Declaration of Independence, this 2000 year old text is bound to contain areas that are problematic: the critical point is to ensure a culturally level playing field in dealing with them.

The substantive issues: safeguards and provisions for welfare

The *Rājadharmaparvan* is found in Book 12 of the *Mahābhārata* and constitutes part of the teaching given by the elder statesman Bhīṣma while he lies dying. It takes place at the end of a great war that had decimated an entire

generation of rulers and its aim, in part, is to persuade the victorious but ascetic-minded king, Yudhiṣṭhira, to take up the mantle of kingship with its necessary cruelties; a context that Fitzgerald explores at length in his introduction to the text (2004, 98-142). However, the *Rājadharmaparvan* represents more than simply an attempt at persuasion, or even the reconciliation of conflicting values. The battle is depicted as the necessary cleansing of a world oppressed by rulers who failed to behave correctly, while Yudhiṣṭhira is the *dharmarāja* - the king who rules by, or embodies, *dharma*; a title that he shares with the historical Aśoka whose impact on the epic's ideology of kingship was profound.<sup>13</sup> Rooted as they may be in the historical circumstances of the time, however, Bhīṣma's teachings, as presented in the narrative, essentially constitute a blueprint for an ideal society, under an ideal ruler, set out on a slate wiped clean by war.

Working from the premise that 'a kingdom is a vast system, hard to hold together for one whose mind is not properly trained' (58.21),<sup>14</sup> Bhīṣma proceeds to tell Yudhiṣṭhira everything he needs to know in order to rule. The *Rājadharmaparvan* is the first of four lengthy sets of instruction, and it ranges in scope from practical details - how to design cities, manage the economy, wage military campaigns - to advice on political expedience and the murky dealings of *realpolitik*, including the use of spies, disinformation and spin. Some of the topics, however, clearly represent more than advice on effective governance for kings. Beyond the text, the voices we hear in Bhīṣma's words are the voices of the epic's redactors: brahmins certainly, keen to protect their position in society, as Fitzgerald points out (2004, 140), but also subjects, acutely aware of the power of the king. In presenting their vision of the perfect ruler they are also presenting their vision of the perfectly governed society. As Fitzgerald says, this and the following sections of Bhīṣma's teachings represent a comprehensive basis for living 'a Good Life in a Good Society in a Good Polity' (2004, 79).

Before considering how the king's duties translated into the everyday detail of subjects' lives, it is worth pointing out that the *Rājadharmaparvan* is a lengthy and openly composite text. Not all the voices it contains agree on every topic: some are harsher than others, some sound a more cynical note, some unashamedly pursue self-interest. Moreover, as is the case for most sources from which antecedents for human rights are drawn, the vision of governance it presents is authoritarian, paternalistic and sometimes ruthless. People's lives were more controlled than would be acceptable today; social strata more firmly demarcated. This means that almost any of the longer passages from which the points below are taken will contain notes that jar. Although those cited have been sifted out of this rather muddier context they are by no means unrepresentative. Within these confines, and amongst these sometimes dissonant voices, there is broad agreement as to the safeguards and support law abiding citizens should be afforded, and where this is not the case it has been noted. Except in the case of direct quotations, the multiple textual references

supporting each of the different points have been gathered together into footnotes.

The overarching duty of the king was to protect, guard and prosper his kingdom, enabling it to thrive physically, socially and economically. The king was charged with protecting his kingdom from those who threatened from without - most typically *dasyus*, barbarians who are themselves a potent symbol of the chaos he is guarding against – and also those who threatened from within: criminals who oppress law-abiding citizens with theft and violence. He does the first through military strength; the second through judicial procedure and punishment. Based on the amount of space devoted to it, provision of a judicial system that was effective, fair and impartial was by far the most important concern for the citizens who compiled the *Rājadharmaparvan*, driven by the desire for a safe environment in which people could go about their lawful business, secure in the knowledge that crime was kept in check. The text repeatedly states that people should not have to fear theft, violence or oppression by their fellows; a security for the vulnerable that is the very mark of civilization, contrasted with the 'law of the fishes' that prevails in its absence.<sup>15</sup> When a society is governed properly, people should be able to move around the kingdom as safely as children in their father's house and enjoy the simple pleasures of life knowing they are safe.<sup>16</sup> As the ultimate symbol of this security, in a properly governed kingdom a woman decked out in gold should be able to lie drunk and insensible in the street without fear of being robbed or molested.<sup>17</sup>

The need for systems of punishment – *daṇḍa*, literally 'rod/stick' - to enforce the law is recognized, but the text is careful to surround them with constraints: it seeks to ensure the king himself does not become, as Badrinath puts it, 'the biggest fish of all' (2006, 425). The king should grasp the rod of *daṇḍa* firmly but he should be gentle in his use of it. Punishment should not be unduly harsh and neither should it be arbitrary or haphazard. It should only be applied according to the law and more serious punishments, such as banishment or execution, should not be used lightly.<sup>18</sup> One passage prohibits the torture of even the king's enemies.<sup>19</sup> Judicial procedure should be careful, open and scrupulously honest, with a lengthy passage at 86.6-18 setting out directions for this. Here it is stated that the king should consider cases in the presence of eight officials, including four brahmins and three *śūdras*, the highest and lowest strands of society respectively. Trials should be held openly and defendants should be present and allowed legal representation. Judgements arrived at should be publicly displayed and miscarriages of justice are strongly condemned. Some of these points are reiterated elsewhere in the text and the need for impartiality, in relation to both procedures and those who implement them, is strongly emphasised. No one was to be considered above the law: not even the king's parents, wife or priest should expect to escape punishment if they transgressed it.<sup>20</sup> The text has more to say on all these points, and they are also



documented at length elsewhere in the textual corpus and the secondary literature relating to it.<sup>21</sup>

After a fair and well-administered judicial system, the second most pressing concern for the text's redactors was the protection of subjects' property from unlawful or excessive taxation. While the need for taxation was fully accepted – it constituted part of the agreement between subjects and king – it was only to be levied at the lawful rate and used for the good of the country and its people: the king who taxes his subjects but fails to protect them is called a thief.<sup>22</sup> Taxes should not be so high as to deter people from working, for, expressed in the imagery of husbandry the redactors were so fond of, 'he who... cuts open the cow's udder gets no milk' (72.16).<sup>23</sup> Other than through lawful taxation, people's property should not be seized by the state and neither should their possessions be harmed.<sup>24</sup>

The idea that the king's right to levy taxes was dependant upon using them for the good of the kingdom takes the material into areas covered by positive rights in contemporary thinking. The king was charged with materially furthering the welfare and prosperity of his people; he must know 'how to spend money as well as acquire it' (66.6). This included grants for public works, such as the maintenance of buildings, roads and water supplies, and support for subjects during times of famine or crisis. A passage at 87.6-10 gives a broader picture of a society undergirded by the king that is one of industry, material comfort, and thriving religious and cultural activity.<sup>25</sup> The king's particular responsibility towards the poor and vulnerable is repeatedly emphasised: he should 'wipe away the tears of the poor, the helpless, and the old' (92.34); 'bend down to the wretched' (137.101); 'have compassion for all beings, deliver and protect the dejected and broken' (64.26). The practical manifestations of this should take the form of jobs and subsistence for the poor, as well as provision for widows, unmarried women and girls.<sup>26</sup>

The need to establish safeguards for both non-combatants and soldiers in the event of war is another topic covered at some length; an anticipation of ideas of *jus in bello* in European texts about which much more could be said.<sup>27</sup> The king should make provision for his own civilians when preparing for defence, and refrain from causing unnecessary suffering to those of his enemy when attacking.<sup>28</sup> In victory he should be merciful, 'showing kindness to even babies in the womb' (34.32). Those who surrender should not be killed, and neither should children, women and old men, while in another verse the king is told to protect refugees 'as if they were his own children' (92.32).<sup>29</sup> The text is also particularly strong on setting out rules for combat, some of which come very close to contemporary norms. The use of certain weapons is prohibited – poisoned or barbed arrows are deemed 'weapons of the evil' (96.11) – and stipulations are made for the treatment of enemy soldiers: those wounded should receive

medical treatment; those who throw down their weapons should not be harmed; those taken captive should be released after a period of time.<sup>30</sup>

Many of these points occur in a lengthy section on ethical warfare (chapters 96-103). This usefully debunks the easy dismissal of classical Indian rules for warfare as formulaic ideals, rather than genuine normative principles for actual combat, by including such practical details as the most effective weapons to use in different situations, the best weather in which to attack, and the terrain best suited to different sections of the army.<sup>31</sup> A clear distinction is made between rules pertaining to warfare between 'the strictly honourable' (96.12), which could be read as idealised, and those which are 'expedient' (101.2); instructions that 'squeeze the rules of proper conduct' (101.1), intended for use against the worst of enemies – barbarians without any moral principles.<sup>32</sup> Even in the latter case, however, some basic normative standards apply: soldiers who are dying, starving, fleeing or clearly defeated (amongst other considerations) should never be attacked.<sup>33</sup> The text states several times that war should always be a last resort, undertaken only when all other options have been explored, and there is a statement that could be read as an injunction against genocide: even in the case of barbarians, the principal 'hated other' of the text, slaughtering without leaving a remnant of survivors to carry on the line is strongly condemned.<sup>34</sup> Several of these points are highly significant in terms of claims regarding historical antecedents and I shall return to them below.

In addition to these major topics of concern, the text also touches on other issues of importance for human rights. Although there is little direct engagement with freedom of speech or movement, there are a number of references that relate to these topics tangentially. Freedom of movement within the kingdom was certainly expected; indeed it was one of the things that the rule of a king protected. Freedom to leave a kingdom that was badly ruled or afflicted by disaster is also suggested, with one reference stating that a subject would be stupid not to do so.<sup>35</sup> The issue of freedom of speech is more complex. Those who denied the Veda (*nāstika*) were not tolerated, and the king is told to punish or imprison those who do so in several places, although this may well have been a largely rhetorical swipe at Buddhism, one of the 'unacknowledged "ideological enem[ies]"' (Hiltebeitel 2011, 193) with which the text engages.<sup>36</sup> Another passage, however, urges a king to support all holy men, whatever sectarian marks they wear, and the boundaries of religious and philosophical thought in ancient India were extremely wide.<sup>37</sup> The text also states that it is the king who enables the harmonious co-existence of groups with 'different observances [and] customs' (104.31-2), something identified as one of his most difficult accomplishments.

The situation regarding participation in government and the people's sanctions against misuse of power by the king is complex and another topic to

which much greater space could be afforded. While the main form of governance in the text is an absolute monarchy, there is some indication that the king was, at least theoretically, accountable to his people. Germs of this idea can be found in one of the text's two charter myths for kingship (67.18-31), where the primordial king takes control at the people's request, with a strong sense of contractual agreement in the arrangement, ruling with a power and splendour gained from them: 'March out to victory, blazing like the sun!... *Our dharmic* deeds will always conquer!' (67.28).<sup>38</sup> They can also be found in etymologies that derive 'king' – *rājan* – from *√rañj* – 'be pleased with': one states that 'the designation "king" arose from the people's affection' (29.131), and leaves open the possibility that when this affection is removed, so too might be the title. Other passages reiterate this, with some making a move from accountability to revolt that is historically significant.<sup>39</sup> One which urges the king to win his subjects' hearts also says that a dishonest or greedy ruler 'is quickly set aside by his own people' (57.27); another that 'even his own people do not tolerate' a king who allows his men to behave badly (94.3). Another passage takes this further, stating quite explicitly that a king who employs evil counsellors 'should be slain by the people' (93.9); a violent removal of an unworthy king that also finds echoes in the other charter myth at 59.13-140.<sup>40</sup> Certainly, the deeply symbiotic nature of the relationship between king and subjects is emphasised throughout and the king who forgets this and treats his people wrongly 'chops into his own self, like an axe splitting a tree' (95.8).

By now it should be apparent that much of what was being sought in this classical Indian discussion of people's lives within the state can be found, albeit expressed in a discourse of the duties of the king. The areas of life the text is most concerned with – a fair and open system of justice; checks to the king's claim on his subjects' property; help for the poor and vulnerable; the maintenance of a material and social infrastructure within which agriculture, commerce and culture can thrive; protection from the horrors of war – all have considerable overlap with many of the issues addressed by human rights. The inhabitant of a state ruled by the standards set out in the *Rājadharmaparvan* would be protected against miscarriage of justice or unfair trial, against arbitrary imprisonment, death or banishment. His or, quite explicitly, her property and person would be secure against harm by the state or other individuals. He or, again quite explicitly, she could expect help from the state in times of hardship, protection in times of war. People would be provided with an environment in which their endeavours could be expected to flourish, have freedom of movement, and reasonable freedom of expression. They would also have some precedent for challenging the legitimacy of a ruler who did not safeguard these things. While the extent to which these principles were put into practice may be open to discussion (although there is certainly historical evidence to suggest that some of them were),<sup>41</sup> this is no less true of the standards set out in the Universal Declaration of Human Rights, as Thapar noted some time ago (1966,

31). The point is that this early Indian blue-print for the well-run state provides a vision of conditions required for the dignity and welfare of its people that is remarkably close to that expressed in the substance of human rights today.

This is valuable in itself. It adds to the pluralisation of historical narratives for the substantive issues and it begins to engage with the claims being evaluated. Nothing has been found so far to support the argument that Hinduism is distinctively incompatible with human rights, while the stereotyping of Indian ethical norms as spiritual, with its *sotto voce* 'merely,' is substantially undermined by discussions of normative principles for ethical warfare in a context as far removed from the 'spiritual' as it is possible to be: dirty tactics to defeat a savage enemy. Some of the material also begins to engage with more specific historical claims, although there was insufficient space to examine these in detail. Stipulations regarding the treatment of refugees, the captured, and the defeated come very close to those found in the early modern works of Gentili and Grotius, who are seen by many as landmark figures in the movement towards human rights: Gentili for his 'innovative doctrine' (James 2007, 11) that refugees should be granted asylum; Grotius for his 'visionary' (Bring 2006, 138) principles of humanitarian treatment for captured soldiers and civilians.<sup>42</sup> The suggestion that subjects might themselves depose an unjust ruler, rather than relying on a God or gods to do so, begins to approach the idea of a right to revolt; something Donnelly has argued to be absent from pre-modern sources in general, and others have reiterated in the specific context of ancient India.<sup>43</sup>

However, two significant questions still remain. Firstly, were these provisions and safeguards universal to all, or were they only in place for certain privileged sections of society? Secondly, is there any indication that others were denied them because they were seen as somehow less than human? In other words is there any equivalence to the key principles of universality and common humanity? These questions are particularly important to these debates. While many would concede that the substantive elements of human rights can be found fairly widely, fewer would accept that the same is true of the principles: it is the perception of their absence outside the intellectual traditions of Europe that fuels claims such as Headley's, and it is the perception of their absence in traditional Hinduism, more specifically, that forms the core of arguments concerning incompatibility. Any attempt at addressing these questions leads inevitably to the issue of caste: a topic on which the need to 'negotiate the spaces' is at its most acute.

The principles: universality and common humanity

It will be helpful to begin by reiterating three things by way of delineating what these spaces are. Firstly, that many aspects of caste, in both its textual and practical manifestations, are undeniably incompatible with human rights; any discussion that wants to seriously engage with the theoretical literature needs to

acknowledge this. Secondly, that recognition of these problems is no more the 'Gift of the West,' to use Baxi's phrase again, than are human rights themselves: they have been subject to internal contestation and discussion for millennia. Several debates concerning *varṇa* can be traced within the *Mahābhārata*, and these continue to inform more recent attempts to separate what some value in the system (particularly its vision of society as an organic whole) from aspects that any progressive reading must agree are problematic.<sup>44</sup> Thirdly, discussing these issues across a level playing field – something fundamental to Taylor's 'presumption of equal worth' (1994, 72) which most deem necessary for any meaningful cross-cultural debate – requires not only bringing to the text a similar awareness of complexity, context and polyphony routinely applied to European sources, but also similar criteria for evaluation. It is a very obvious point, but one often overlooked, that a society built around inequality and caste divisions in ancient India should be compared historically with societies built around inequality and slavery in ancient and pre-20<sup>th</sup> Century Europe and America, rather than with contemporary norms. It is quite possible to argue this without condoning human rights abuses associated with caste today.

Social division in the *Rājadharmaparvan* (and the *Mahābhārata* as a whole) was mainly according to the fourfold system of *varṇa*, with brahmins at one end and *śūdras* at the other.<sup>45</sup> Groups of people outside the *varṇa* system are also known, including *caṇḍālas* (seen by many as an early form of those later deemed 'untouchable'), *Niṣādas* and other tribal peoples, as well as the more loosely defined *dasyus*: barbarians and foreigners against whom, to some extent, Āryan society defined itself. *Varṇa* is absolutely fundamental to the text: the king is repeatedly enjoined to maintain the *varṇas* in their proper order; keep the people within them to their appropriate duties (*varṇadharmā*); and stop the mixture of *varṇas* through marriage (*varṇasaṃkara*), something seen as one of the great evils that befall a barbarised society.<sup>46</sup> Moreover, statements to this effect are made in the same passages that cover many of the issues considered above: being kept within one's *varṇa*, and being made to follow the duties appropriate to it, is as much a part of the 'Good Life in a Good Society in a Good Polity' as a just judicial system, fair taxation, and a well maintained material environment.<sup>47</sup> The *varṇas* are not presented as socially equal in status, an inequality reflected in a system of privileges at the top and a set of restrictions at the bottom.<sup>48</sup> Although the text's treatment of these issues (and the *varṇa* system as a whole) is more complex than this brief summary suggests,<sup>49</sup> these inequalities, along with the restrictions on marriage and occupation concomitant to them, would of course be problematic in terms of contemporary human rights; although, to reiterate, the same is no less true of features found in other historical sources widely included amongst their antecedents.<sup>50</sup>

On the crucial issue of how far within society the safeguards for dignity and welfare extended, however, although there may have been additional

benefits for some groups, there is no indication that *śūdras*, the lowest social stratum the *Rājadharmaparvan* treats in any detail, were excluded from the major provisions outlined above. Nowhere is it said that access to a fair, impartial and properly conducted legal system was restricted to the upper *varṇas*; indeed, there is every indication that it was not: as we saw, three *śūdras* were included in the list of those who should consider judicial proceedings.<sup>51</sup> Neither is there anything to indicate that *śūdras* were excluded from the general injunction that the king should protect and prosper his subjects. Again, the fact that they were not is made explicit: the king should be compassionate 'to the four *varṇas*' (56.36); he should regard favourably 'all the *varṇas*' (57.30).<sup>52</sup> Whatever social restrictions and inequalities undoubtedly existed, therefore, there is no evidence, in this text at least, that these inequalities affected the safeguards set in place as basic requirements for human welfare within the state.

The notion of a common humanity is more complex, both in terms of what the idea entails and also what might constitute evidence for it in this and other historical sources. For the purposes of the debates at hand, however, the most basic question can be framed as follows: is there any evidence to suggest that all members of the human species are, to repeat Donnelly's definition, 'in some important sense equally human beings' (2013, 70)? This is the idea that Donnelly stated to be fundamentally alien to Hinduism in his earlier work, and it is this understanding of common humanity that Headley and others have claimed to be uniquely European in provenance. Because Donnelly has not revisited this aspect of his assessment of Hinduism, which has proved rather influential, it is worth considering in a little detail.<sup>53</sup> There were two main aspects to his claim. The first is that, 'As we saw in the case of Hindu India, some societies have not even recognized "human being" as a descriptive category' (2003, 91). The second is that 'in many ways the difference between high castes and low castes is greater than that between lower castes and animals' (2003, 83). These add up to two separate but closely related points: a) that there is no sense of a common human identity; b) those at the bottom end of the social scale are not considered equally human in terms of either their intrinsic nature or the way in which they should be treated.

The first is the most straightforward and the easiest to address. The *Rājadharmaparvan* certainly does know 'human being' as a descriptive category. It has several words for it and uses these to clearly differentiate humans from other categories of living beings: gods and other celestial beings on the one hand and, more importantly for Donnelly's second point, animals on the other. Thus, to give just two examples from several, Brahmā is said to have created gods, demons, humans (*manuṣya*) and serpents (121.55), while farmers are said to sustain the gods, ancestors, humans (*manuṣya*), and animals (90.24).<sup>54</sup> More significantly, another verse states that what makes a being human is an acceptance of *maryāda* – moral laws, limits, frameworks: without these, humans

(*manuṣya*) become like beasts (*paśubhūta*) (65.7). The *Rājadharmaparvan*, of course, is not alone amongst Indian texts in knowing 'human' as a category, and it is worth pointing out that references showing a clear distinction between humans and animals can also be found in the *Manusmṛiti*, a text which Donnelly draws on to reinforce his argument.<sup>55</sup> Clearly, then, the contention that the tradition has no conceptual category corresponding to 'human' is simply wrong.

Taking up the issue of how widely this category extended, the sense of a common human identity irrespective of status emerges in a number of different ways in the text. At one end of the social scale, it comes across very clearly in the first of the text's two charter myths for kingship mentioned above, where it could not be emphasised more graphically that the king is the same as his subjects 'in all the characteristics of mankind' - *samaḥ sarvagunair nṛṇām*: he has 'the same pains and pleasures; the same back, arms and belly; the same semen, bones and marrow... he breathes in and out the same...'; a sense of commonality brought home by the repeated use of *tulya* - 'of like kind' in the description (59.6-7). More significantly, at the other end of the social scale, the important verse cited above in which all those with *maryāda* are identified as human (65.7) is followed further on in the same passage by one that applies the description *mānava* - another word for 'human' - to even the quintessential barbarian outsiders, *dasyus* (65.23). Indeed, the passage uses the same term at the end of a long list of every possible race of barbarous foreigner (*mleccha*) who might live in a kingdom: they are, 'in their entirety,' *mānava*, with the term also including those from all four *varṇas* (65.14).<sup>56</sup> These verses are part of a discussion about how a king can ensure that all the people in the kingdom, including barbarians, conform to *dharma*. The answer is that there are basic norms of behaviour for everyone - *sarvalokasya* (65.22). These include paying respect to elders, providing for one's family, and practising virtues such as non-injury, truthfulness and suppression of anger: virtues which elsewhere in the text are identified as *sanātana dharma* - always and everywhere applicable.<sup>57</sup>

Just beyond the *Rājadharmaparvan*, a discussion early in the *Āpaddharmaparvan* reiterates these common standards, coming back to the idea that the salient distinguishing feature is awareness of fundamental moral boundaries - *maryāda*. Again it sets this within the context of barbarians, in particular those 'fierce and pitiless' *dasyus* who may be used in a king's army for 'undertaking frightful deeds' (131.10-11), stating that even such as these will censure certain deeds and fear the lack of moral boundaries.<sup>58</sup> The passage then moves on to the verse cited above as a condemnation of genocide: even if these people are still considered barbarians despite the fact they shun these deeds, it is nevertheless 'the fixed opinion that they should not be slaughtered without leaving a remnant' (131.16-17). In other words, the humanity of barbarians extends to both capabilities (basic moral awareness) and what is due to them: even if they are barbarians they should not be eradicated without trace.

The emphasis has been on the status of barbarians for two reasons. In terms of Donnelly's argument, recognition of the common humanity of *dasyus* – the members of the human race arguably at furthest remove from those at the top of the *varṇa* system – must call into question his statement that this is not the case for those lower down the caste system (although I am mindful of the force of Sathaye's distinction between '[o]utcaste and outsider' 2015, 101). Certainly, in the case of *śūdras*, the lowest group the *Rājadharmaparvan* discusses in any detail, not only are they explicitly identified as *mānava* in the verse already cited (65.14), there is every indication that elsewhere their humanity was simply taken for granted, as their inclusion within the basic safeguards listed above suggests. From the evidence [here](#), therefore, whatever other problems *varṇa* might involve, considering those at the bottom of the system to be less than human does not seem to be among them.

The second reason is that it is precisely this extension of common humanity to 'even barbarians' that has been claimed as historically unique to Europe. Headley, for example, in forwarding the argument that 'the early identification of the idea of humanity as a single moral collectivity' was a 'unique feature of Western civilization' (200, 63), cites Cicero for the idea that common humanity should be extended to barbarians (2008, 64), along with the 16<sup>th</sup> century Jesuit Las Casas for the recognition that 'All the peoples of the world are humans and there is only one definition of all humans... that is that they are rational' (2008, 78). Others have variously credited Vitoria, another Jesuit, as the person 'who first expressed the idea that "barbarous" peoples too must be considered equal members of the universal human community' (Johnston 2008, 110), or 'human rights visionaries' such as Grotius and Descartes for 'affirming a common humanity that transcended religious sectarianism' (Ishay 2008, 78). It is not the examples given but the nature of the claims – 'unique,' 'first,' 'visionaries' – that is the problem here. While it is natural that those constructing historical narratives for human rights will draw on the intellectual heritage with which they are most familiar, the assumption that the building blocks for what Ignatieff has called 'the lingua franca of global moral thought' (2001, 53) will not be found outside of this, is hard to read as anything other than, at best, blatantly Eurocentric or, at worst, in Baxi's words: 'overt epistemic racism' (2012, 45-6).

#### Conclusion: negotiating the spaces

This has been a long and rather detailed textual study, but one of the points being emphasised is that this is the level of engagement necessary across the board for meaningful cross-cultural debate. It set out to investigate a number of arguments found in the theoretical literature, and it will be useful to briefly summarise what was established in relation to these before proceeding further. The first argument centred on the issue of whether this small but fairly representative 'slice' of the tradition's texts supported the lingering sense that



Hinduism is distinctively incompatible with human rights, or India's historical discussions of polity problematic in a way that is not the case with those antecedents more widely considered 'foundational.' The evidence suggests it does not. The safeguards and provisions set out in the *Rājadharmaparvan* showed broad agreement with those encapsulated by human rights, and there was no evidence that certain sectors of society were excluded from these by virtue of social status or gender. Crucially, despite the text's emphasis on the importance of *varṇa*, there was nothing that lent credence to the claim that those at the bottom of the system were seen as less than human; still less that 'human' as a category simply did not exist. Humans were distinguished from animals by the existence of a basic moral awareness, and this applied irrespective of social status or even, with the inclusion of *dasyus*, distinctions corresponding to religion and race. This is not, of course, to say that other voices in the tradition then or now might not have put forward different arguments. However, if Headley can assert that 'the very complexity and polyphony of the European intellectual context' ensured those voices asserting a common humanity were never entirely lost, even during the growing racism of the colonial period (2008, 78), the same is no less true here.

The second point at issue was whether the text contained anything to counter broader claims that antecedents for human rights are found primarily, or even exclusively, in the intellectual histories of Europe. Here there was evidence suggesting it does. As well as challenging the claims regarding the extension of a common humanity to 'even barbarians' just discussed, material was found that served to undermine several others, particularly in the section dealing with stipulations for humanitarian warfare. It is worth restating that the *Rājadharmaparvan* is only one of a number of texts where ideas such as these may be found. Other studies have discussed notions of *jus in bello* across a wider range of Indian sources, as mentioned above, while a broader trawl of the *Mahābhārata* itself yields further avenues that could be fruitfully explored in relation to the notion of a common humanity.

Although the primary focus up to now has been engaging with these debates within the theoretical literature, it is impossible to conclude without also briefly considering ways in which this might interact unhelpfully with debates elsewhere. The need to challenge Eurocentric readings of intellectual history in one direction, without playing into agendas inimical to human rights in another, is something that applies across a range of cultures. In the political climate of contemporary India, however, any attempt to find antecedents for human rights in formulations of 'Hindu' kingship involves a rather specific set of problems. Over the last few decades the rhetoric and symbolism of kingship has become strongly identified with the ideology of Hindu Nationalism (*Hindutva*), where it has been used, in particular, to further anti-minority agendas that have led to human rights abuses against India's Muslim and other non-Hindu communities.

The role played by the narrative of Rāmrāj, the idealised rule of Rāma, in the Babri mosque campaign in Ayodhya, which led to waves of catastrophic communal violence in the 1990s, has been well documented.<sup>59</sup> The term 'Raj dharma,' meanwhile, has become indelibly associated with the massacres that took place in Gujarat in 2002, when local Muslims were blamed for the death of Hindutva activists in a fire on a train at Godhra. The weeks of rioting and violence that ensued resulted in around a thousand, mainly Muslim, deaths, as well as the widespread destruction of homes and businesses. Both the BJP-led coalition that ruled the state, and its Chief Minister, Narendra Modi, were widely viewed as complicit in the actions leading to this.<sup>60</sup> Announcing a rehabilitation package in the wake of the riots, the then Prime Minister, Atal Vajpayee, famously told Modi that he should 'observe his "Raj dharma" without showing any discrimination... on the basis of caste, creed or religion' (*The Hindu*, April 05, 2002), to which Modi replied he was 'exactly doing that.' The phrase has subsequently ricocheted around the Indian press, alternately used to justify or condemn more recent actions by Modi (who became Prime Minister of India in 2014) and the BJP at state and national level.<sup>61</sup>

If the selective use of the tradition's texts by the Hindu Right has made them toxic to progressive Indians in the way documented by Das and others, the reverberations from Vajpayee's comment mean that any discussion of a text on *rājadharmā* has to tread very carefully indeed. Many of the features of a study such as this, particularly its focus on what can be read as 'Hindu' kingship, on India's ancient rather than medieval past, could all too easily resonate with the Hindutva 'saffronisation' of Indian history.<sup>62</sup> It therefore needs to be made very clear that using a textual study of the *Rājadharmaparvan* to contest the claim that Hinduism is incompatible with human rights is not the same as defending the actions of those who have co-opted the rhetoric of kingship today. It also brings into even sharper focus the question of how one might negotiate the spaces between these problematic readings.

The academic study of Hinduism has grappled with the problem posed by Hindutva for some time now, challenging its restrictive interpretations through a greater focus on subaltern histories, on the complex intellectual dialogues between the subcontinent's different religious communities, and on the way that these, as well as the tradition's inherent pluralism and diversity, are reflected in its texts. Some of the more recent debates within human rights theory also suggest strategies that may prove helpful. Along with a growing sense that *any* history of human rights, however broadly drawn, is essentially problematic, that they represent an idea that is better approached 'sui generis' (Beitz 2009, 197), as a radically new ethical framework to which 'all nations come as strangers' (Baxi 2012, 46), there has also been a move away from the paradigm of compatibility and the narrative of inherent opposition between religion and

human rights which fed into this. Both of these have been fuelled, in part, by a greater sensitivity to the influences still exerted by the legacy of Colonialism, along with the corresponding recognition that human rights might “travel” better,’ in Taylor’s words (1999, 126) if their historical narratives and philosophical justifications were tied less closely to the intellectual traditions of Europe.

These changing parameters bring a rather different set of questions to a text such as the *Rājadharmaparvan*; questions less to do with how its teachings might *conform* to human rights, or accord with their notional histories, and more to do with the resources it might provide for furthering their *reception*, helping to furnish them with ‘origin myths’ (Baxi 2012, 199) that will better foster their ‘vernacularization’ (Merry 2006, 39) within a variety of cultural backgrounds. For Hunt, these questions might revolve around channels for emotional resonance similar to those that enabled ‘equality of rights [to] become a “self-evident” truth in such unlikely places’ as 18<sup>th</sup> century France and America (2007, 19); for Taylor, ‘the ideals, the notions of human excellence, the rhetorical tropes and reference points by which these norms become objects of deep commitment’ (1999, 136); for Baxi, ways in which the text might ‘configure the notion of what it mean[s] to be *human*’ (2012, 47). These arguments are complex and it is impossible to do justice to them here. For the purpose of concluding this enquiry a much simpler question can be posed: how may the text be used to challenge rather than endorse those who condone or justify abuses?

That the rhetoric of ‘Raj dharma’ has proved to be a two-edged sword is obvious from its use in the Indian media. There is, however, nothing new in this. The words put into Bhīṣma’s mouth were intended to instruct but also to pass judgement; a function made obvious by passages where the description of a country governed according to the principles of *rājadharmā* is contrasted with one where this is not the case: visions of brutish chaos where all restraints break down and people ‘tear each other to pieces like dogs a lump of flesh’ (122.21), where ‘the strong roast the weak on a spit, like fish’ (67.16).<sup>63</sup> When the text is understood, therefore, not so much as the representation of a glorious Hindu past, as Hindutva rhetoric would present it, but as a set of norms against which those in power can be judged, there is much in Bhīṣma’s teachings that can sharpen the edge of the sword turned towards insurrection. Rather than describing how a kingdom was, these statements specify how it should be. If the ruler of a state performs his ‘Raj dharma’ women will be safe from harm; the vulnerable protected from injury by others; potentially conflicting groups supported in harmonious co-existence; the ‘broken’ given help. If they are not, Bhīṣma’s teachings provide a weapon for challenging the government in question. Those deemed wanting might find, like kings who fail to win their subjects’ approval, that they must be ‘prepared to use [their] shoes’ (129.13).

Returning to Vajpayee's use of the term and the events that precipitated it, the text contains much to put the lie to Modi's claim to be 'exactly doing that.' Not only do the many beautiful metaphors for the ruler's responsibilities towards his people – he should 'nurture his subjects like a mother' (137.101); devote himself to their welfare 'as a pregnant woman to her unborn child' (56.44-5) – highlight the extent to which the state fell short, they do so in a way that taps into the emotive empathy that sits at the heart of human rights. Most visceral of all in this regard is the disturbing resonance between the horrors of a failing kingdom and eyewitness accounts of the carnage in Gujarat.<sup>64</sup> While elements of the text's descriptions can, and always could, serve to support other agendas, this resonance, again, shows how the sword may cut both ways.

Even this very brief discussion should make it clear why the shift towards a paradigm of reception and resource is so useful. When the *Rājadharmaparvan* is interrogated as this shift suggests, any evidence it yields to counter claims that human rights are fundamentally alien to Hinduism from without, at the same time constitutes a resource for those challenging abuses from within. To argue that Hinduism is compatible with human rights, that those at the bottom of the social scale were clearly seen as human in this much vaunted exposition of Hindu kingship, does not endorse those who commit abuses in its name, it challenges them. Conversely, failing to contest these negative readings of the tradition within global debates only serves to perpetuate a process that Taylor calls 'self-reinforcing' when he says, 'The more the outside portrayal... comes across as a blanket condemnation of or contempt for the tradition, the more the dynamic of a "fundamentalist" resistance to all redefinition tends to get in train' (1999, 140). These shifting parameters are particularly effective when brought to the struggle against Hindu Nationalism. They permit the acknowledgment of the postcolonial criticism it contains, while challenging those aspects hostile to human rights, through the use of resources that are incontrovertibly 'swadeshi' - home grown on Indian soil.<sup>65</sup>

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<sup>1</sup> Donnelly's third edition of his influential *Universal Human Rights in Theory and Practice* covers a broader range of features, giving more emphasis to the tradition's diversity and malleability (2013, 147-158).

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<sup>2</sup> Freeman, for example, lists Jewish, Christian, Muslim and Buddhist beliefs as part of the 'broader and deeper moral ideas, such as those of justice and human dignity, that are found in many cultures' (2005, 152) but makes no mention of Hinduism. Griffin, likewise, references Islam, Buddhism and Confucianism in a similar context but not Hinduism (2008, 138).

<sup>3</sup> Griffin's arguments are rather subtler than this summary suggests. He makes the point as part of the important argument that it is a contemporary receptivity to human rights that matters, something on which Donnelly now concurs (2013, 156).

<sup>4</sup> See for example: Thapar 1966; Mitra 1982; Sen 1997; Sharma 2003; Mehta 2011.

<sup>5</sup> Some of the more recent examples would include: Mehta 2011, 202; Baxi 2012, 178; Das 2009, 162.

<sup>6</sup> For its persistence, see, for example: Johnston, whose otherwise sympathetic approach to broader histories still refers to 'the fatalism and other-worldliness of Hindu society' (2008, 277). It is also notable that Griffin, who presents the stereotype in order to critique it, shifts from the initial use of 'Hinduism' when he presents it, to 'India' when he problematises it' (2008, 140-1).

<sup>7</sup> For the other examples, see pp. 2, 7 and 217.

<sup>8</sup> Sen makes the point in relation to theories of justice, continuing with the equally understated: 'There is nothing particularly odd in the recognition that similar intellectual engagements have taken place in different parts of the globe.' Further on he argues, again in a way equally applicable to human rights, that the idea of notions such as democracy being 'imposed' on non-Western cultures 'is extraordinarily inappropriate since it makes the implicit assumption that democracy belongs exclusively to the West' (2009, 322).

<sup>9</sup> For a recent discussion of the Aśokan *Edicts* and Kauṭilya's *Arthaśāstra* in relation to human rights, see Rich 2010. The dating of Indian texts is highly contentious but the latest scholarly consensus currently places all the sources mentioned here within a roughly 500 year period, starting with the *Edicts* (mid 3<sup>rd</sup> Century Before Common Era) and ending with the *Arthaśāstra*, previously linked with the reign of Candragupta Maurya in the 4<sup>th</sup> CBCE but now placed between 50 and 125 CE for the Kauṭilya Recension and 175 and 300 CE for the final Śāstric Redaction (Olivelle, 2013, 29, 31). The *Rājadharmaparvan*, as part of the *Mahābhārata*, falls within the first half of this span, around the mid 2<sup>nd</sup> to late 1<sup>st</sup> CBCE, along with the roughly contemporaneous *Manusmṛti*: see Hiltebeitel 2001, 17-21 and 2011, 11-20 for a longer discussion of the epic's composition, and for the chronological proximity between it and the *Manusmṛti*, 2011, 190-91, 197. All of these sources would have been drawing on considerably earlier material.

<sup>10</sup> Das's concern that he 'had to fear the intolerance of my 'secular' friends as much as the bigotry of the Hindu Right' (2009, xxxv) is reflected in several of the articles in Doniger and Nussbaum 2015. Nussbaum, in particular, also notes that



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for progressive liberals in India, 'religion is profoundly unfashionable, almost unmentionable,' because so widely identified with the 'narrow sectarian version of Hinduism' peddled by the Hindu right (Doniger and Nussbaum 2015, 52, 53). Kanjilal's article in the same volume also highlights the need to reclaim the 'no-man's land' created by this polarization, so that 'normal, unaggressive conservatives [might] be given their space back and allowed to make respectable homes there' (Doniger and Nussbaum 2015, 241).

<sup>11</sup> As Sen, for example, seeks to do in relation to ideas of freedom, democracy and tolerance (1997, 15-17, 27). Rawls also does something similar in *The Law of Peoples* (1999), where he attempts to de-couple human rights (and the notion of 'decent' governance more broadly) from the particular values of liberal democracies. Arguing that 'it is important to see that an agreement on a Law of Peoples [broadly, an international consensus on standards of justice] ensuring human rights is not an agreement limited only to liberal societies.' (1999, 68), he posits the category of what he calls 'decent hierarchical peoples'; possible non-liberal societies that still pursue government for the common good and recognise the need for 'urgent' human rights to be protected.

<sup>12</sup> The relationship between rights and duties, although an important feature of some debates, is not something I propose to explore in any detail here. It should, however, be pointed out that some attempts have been made to find an equivalent to rights in the Indian idea of *adhikāra*, a word that occurs very rarely in the *Rājadharmaparvan* (57.6; 61.21) and not in a way that throws much light on the issue. For some of the discussions of rights and duties in Hinduism that mention *adhikāra*, see: Sharma 2003, 30-49 (he discusses *adhikāra* on p.36); Carmen 1988 (p.121 for *adhikāra*); Mitra 1982 (pp.78-80 for *adhikāra*).

<sup>13</sup> For discussion of the text's historical background, see Fitzgerald 2004, 99-142. Fitzgerald reads the *Rājadharmaparvan* as an attempt to reassert a *brāhmaṇya* ideology of kingship following the patronage of Buddhism and Jainism by the Nanda and Maurya dynasties that ruled between the 4<sup>th</sup> and 2<sup>nd</sup> centuries BCE. He discusses the relations between Aśoka and Yudhiṣṭhira on pp.114-23, 129-30 and, especially, 135-9. The profound effect that Aśoka's adoption and adaptation of Buddhist *dharma* has had on the development of the subcontinent's emerging religio-philosophical traditions has been discussed at length by Hiltebeitel, who likens it to 'an anicut or great dam, toward which numerous Vedic and Buddhist tributaries must have flowed, gotten dammed up for a while and forced to intermingle, and from which they then overflowed, each with new vigor, as the two communities took the potent waters into new flows and channels of their own further devising' (2011, 30). This, and the overlap between the norms of governance articulated in the Aśokan *Edicts* and the *Rājadharmaparvan*, additionally calls into question any overly rigid distinction between 'Buddhism' and 'Hinduism' at this stage of development and the way this sometimes plays out in discussions of human rights.

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<sup>14</sup> For those unfamiliar with the *Mahābhārata*, most systems of referencing are tripartite, designating book, chapter and verse (e.g. 12.58.21). However, as references here are from Book 12, I have simply given chapter and verse in the majority of cases. All references are to the Critical Edition of the *Mahābhārata* (Sukthankar et. al.: 1933-70) and all translations my own.

<sup>15</sup> For one of the many expressions of this see, for example, 68.14-19, 30-31 which contrasts social conditions that prevail when the rule of law is firm with the chaos that ensues when it is absent.

<sup>16</sup> 57.33 and 73.23-4, respectively.

<sup>17</sup> 29.70, with a similar statement at 68.32.

<sup>18</sup> 122.40-1: the passage lists censure, imprisonment, and fines as less serious ones. For other points mentioned here see: 57.29 (be gentle in the use of *daṇḍa*); 94.4, 95.9, 104.7 (condemnation of violent king); 71.7, 92.27 (punishing only those who deserve it).

<sup>19</sup> 97.14 – although continuing, somewhat cynically, that torture is seldom effective. Another verse does, however, mention torturing to death those who attempt regicide (86.21). It is part of a passage that also, problematically, states the different social orders should receive different punishments (86.19-21).

<sup>20</sup> 121.57. The point is also made at 32.6; 57.7; 92.31. For references to impartiality see: 65.5, 66.5, 121.10. Impartiality, honesty and suitable qualifications are deemed essential requirements for those holding positions of office: the king should not appoint 'blockheads' (72.9) simply because they are his cronies. For some of the many expressions of this see 84.1 and 120.25-6; the former opening a lengthy description which illustrates the tension and relationship between the interests of the king and those of his subjects.

<sup>21</sup> For discussion of these topics in relation to other texts, see: Rich 2010, 68-93 (Kauṭilya), 116-128 (Aśokan Edicts); Alexandrowicz 1965 (Kauṭilya); Scharfe 1989, Part II (Kauṭilya); Menski 2007, 32-54 and Lingat 1973, 207-256 (both drawing on a variety of texts). The comprehensive studies of *dharma* and *artha* by Kane (1962-75) and Derrett (1968) also cover these topics.

<sup>22</sup> 137.96, just beyond the *Rājadharmaparvan*. 72.10-11 is one of several references covering the other points and the idea of tax as part of a contract between people and king is found at 67.23, in the second charter myth discussed below. The most commonly mentioned rate of taxation is one sixth, as in 72.10.

<sup>23</sup> Instead, the text says more cynically, 'he should suck the kingdom softly, like a leach' (89.5). This is part of a lengthy discussion of taxation at 88.11ff.

<sup>24</sup> 57.12, 72.13.

<sup>25</sup> For the other points mentioned here see: 68.5, 87.4 (prosperity and welfare); 57.12, 32, 58.8-9, 69.51 (grants and public projects); 128.30 (support during famine).

<sup>26</sup> 57.19, 87.24, 94.27. The quotation from 137.10 is at the start of the *Āpaddharmaparvan*.

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<sup>27</sup> And, indeed, has been. For recent discussions of issues to do with *jus in bello* over a broader range of Indian texts, see, for example: Brekke 2005; Roy 2007 (who engages with Brekke's arguments); Allen 2006.

<sup>28</sup> See 69.33-4, 42, 54-7 for provisions when defending, with v.33 suggesting that these included the lowly, as well as the rich and powerful, and 104.39, where the king is enjoined not to damage essential infrastructures (following Fitzgerald's discussion of the commentaries (2004, 748, note 1 on 104.39).

<sup>29</sup> The word used here is *śāraṇika*, an unusual word for 'traveller.' Fitzgerald translates it as 'refugee' and Ganguli as 'one who seeks protection' in its only other occurrence in the *Mahābhārata* (13.107.110). For sparing non-combatants, see 99.47, where I am following Fitzgerald's arguments for substituting *bāla* for *bala* (2004, 745, note 1 on 99.47). The treatment of a conquered people is also discussed at 97.5-6, 11-12, 14, with the final verse including the prohibition on torture mentioned above.

<sup>30</sup> On these points see: 96.13 (medical treatment); 97.3 (not attacking one who capitulates); 96.13 and 97.4 (release of captured soldiers, with the reading of the second following Nīlakaṇṭha: see Fitzgerald 2004, 742, note 1 on 97.4.).

<sup>31</sup> For the assertion that these stipulations were not to be taken seriously see, for example, Bring 2006, 13, where he cites them as a manifestation of 'Indian spirituality,' concurring with an earlier writer that they would have had little significance for actual combat.

<sup>32</sup> 101.2 usefully distinguishes between different types of rules/laws: some are established on truth (how things are); some on reasoned argument; some on the actions of the good; some on expedience - *satyena hi sthitā dharmā upapattyā tathāpare / sādhvācāratayā ke cit tathai vaupayikā api*.

<sup>33</sup> 101.24-6.

<sup>34</sup> 131.16-18, at the start of the *Āpaddharmaparvan*. Bowles reads this passage rather less positively, seeing the force of it being contained in verse 18: you should not behave this way towards others, lest they behave this way towards you (2007, 228). For war as a last resort, see: 69.22; 95.1; 103.22.

<sup>35</sup> 137.86-7 (just beyond the *Rājadharmaparvan*). For the point regarding freedom of movement within the kingdom see 57.33, cited above.

<sup>36</sup> See, for example, 15.33. Hiltebeitel is quoting Biardeau.

<sup>37</sup> 18.34. This is a dialogue between a mother and her son and the force of the argument is that the king should support renunciators rather than becoming one. The passage specifies support for 'those who are naked, have shaven heads or have dreadlocks; who wear ochre garments, antelope skin or bark strips,' some of which it is tempting to read in relation to heterodox sects.

<sup>38</sup> The two accounts are at 59.13-141 and 67.18-31, respectively. Both do a very sophisticated job of constructing but also constraining the power of the king: the first in terms of the superior authority of dharma (the king's power over all other men lasts only 'so long as he himself conforms' [59.137]); the second, as indicated here, in the approval of his people.

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<sup>39</sup> This will be discussed below. Other statements of the king's need to win his people's affection include: 57.28-9; 95.3, 5; 120.23. For a more cynical take on why he should inspire his subjects' devotion, however, see 103.39-40: the king should earn his people's trust so he can then exploit them.

<sup>40</sup> References to the people are translating *svajanena* (57.27), *svajano 'pi* (94.3), *lokasya* (93.9). In the first charter myth the paradigmatic king, Pr̥thu, is created from the body of an earlier prototype, Vena, killed because he failed to behave properly towards his subjects. This was the narrative that grounded the king's authority in his conformity to *dharma*, and the manner of his creation provides a strong suggestion of what might happen to a king who fails to do so.

<sup>41</sup> Rich (2010, 85, 135) calls attention to archeological evidence and accounts from contemporary travelers suggesting that this was the case in relation to similar details found in Kauṭilya's *Arthaśāstra* and the Aśokan edicts.

<sup>42</sup> The *De Jure Belli* of Gentili and the *De Jure Belli ac Pacis* of Grotius, written in 1598 and 1625 respectively, are most frequently discussed in regard to the history of humanitarian warfare, but Bring, for example, also sees them as 'indicating an embryonic human rights thinking' (2006, 131). He goes on to say that '[a]lthough Grotius did not articulate a thesis of the inherent dignity of the individual as the motivating factor behind his positions, many of his formulations indicate a thought in that direction' (2006, 141). The ideas Bring is referring to are very similar to those found in the *Rājadharmaparvan*.

<sup>43</sup> Donnelly 1990, 59 and, reiterating the point in relation to India, Elder, who states that 'Nowhere in classical Hindu scriptures does one find any suggestion that subjects dissatisfied with their king's performance of his duty (*dharma*) should revolt against him' (1996, 75). For discussions of the issue across a broader range of Indian texts, see: Menski (2007, 9-10); Scharfe (1989, 66ff), who argues that while references to exiled kings were common in the later *Samhitās* and *Brāhmaṇas*, the importance of subjects' approval appears to have diminished by the time of the epics and *Dharmaśāstras*; and Sharma (2003, 147-9), who discusses Scharfe and Kane.

<sup>44</sup> The most important of these debates is an on-going discussion as to whether it is birth or behaviour that determines a person's *varṇa*, and an example of someone who draws on it in a contemporary discussion is Badrinath (2006, 375-415).

<sup>45</sup> There is little mention of *jāti*, the other constituent element of caste, in this section of the text.

<sup>46</sup> It is no coincidence that Yudhiṣṭhira's summary of what he has learnt about kingship begins with the proper *dharma*, behaviour and livelihood of each of the *varṇas* (108.1), or that the first act of the newly consecrated king in the second charter myth for kingship is to keep everyone joined to their own specific duties and actions (67.30, 31). For examples of the many other references to his role in maintaining *varṇadharmā*, see 70.3-4 and 87.18. For his duty to prevent *varṇasaṃkara* see, for example, 68.29.

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<sup>47</sup> Thus, for example, the description of a well-ordered city includes the fact that all the *varṇas* within it pursued their proper tasks (87.18). It should be pointed out that being kept within the confines of one's *varṇa* is presented as important for everyone: it is not just a way of controlling those in the lower *varṇas*.

<sup>48</sup> Brahmins appear not to pay taxes in some references and cannot be punished as severely as other *varṇas*, while the work of *śūdras* is to serve the other *varṇas* and there are conflicting opinions as to how much property they should own. On these points see, for example: 72.22; 77.7, 9-10 (tax exemptions for brahmins – the latter set by implication as it lists exceptions to the rule); 56.31-33; 59.69, 114; 77.14 (lighter punishments for brahmins); 60.27-35 (discussion of property and servitude in relation to *śūdras*). Menski (2007, 43-8) and Thapar (1966, 32) both note the existence of social inequality alongside metaphysical universalism.

<sup>49</sup> Included amongst these complexities are issues of historical contextualization such as Olivelle raises in relation to some of the statements concerning *śūdras* in the *Manusmṛti*, which he reads as a rhetorical response to the *śūdra* Nandas who ruled in the period preceding its composition (and that of the *Rājadharmaparvan*): see 2005, 37-41; 2010, 42-3. There are several verses where something similar may be at play here too (e.g. 35.6, 65.8 and 92.3). As on most topics in the *Mahābhārata* debates, statements concerning *varṇa* served a variety of purposes and interacted with a variety of audiences and contexts.

<sup>50</sup> Rich makes a similar point in relation to regulations concerning indentured labour/slaves in the *Arthaśāstra*: 'What is remarkable is that even for those individuals at the bottom of Maurya society, there is more freedom than existed in contemporaneous Greek society, not to speak of American society up to the Civil War' (2010, 78).

<sup>51</sup> 86.7 It would appear they could be appointed to positions of power outside of the judiciary also: in one passage the king is told to appoint a good man, 'even one of low birth' (120.47), to oversee his affairs.

<sup>52</sup> There is also some indication that *śūdras* were given the same opportunity to enter the different stages of life as *kṣatriyas* and *vaiśyas* and also participate in worship. For reference to the *āśramas*, see 63.11-14; for participation in worship, see 60.36-9. Both statements are unusual and Fitzgerald discusses some of the issues involved in his footnotes on 63.11 and 13 (2004, 730-31) and 60.36-52 (2004, 726-27). Although the passages go against the general trend in terms of *śūdras*' participation in the *āśramas* and sacrificial rituals, their inclusion in the text suggests that these issues were rather more contested than is generally supposed. Olivelle's more detailed discussion of the relationship between the *varṇas* and the *āśramas* (1993, 190-5) points to the same being true across a broader range of texts. Inclusion in the *āśramas* is important because it has been linked to the right to education (Thapar 1966, 36; Sharma 2003, 77-84); while participation in the sacrifice impacts upon the question of religious freedom.

<sup>53</sup> He has however broadened his argument to say that this idea was alien to most societies (2013, 70), part of the shift towards a more even-handed

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treatment. It should be pointed out that Donnelly is not someone who seeks to ground human rights in early European intellectual history: he sees them as essentially a product of the modern world (2013, chapter 5).

<sup>54</sup> For the use of these words to distinguish 'human' as a category see also, for example, 29.20; 30.5, 7; 31.12; 70.5; 73.21. Other words used include *manuja*, to distinguish a human rather than divine birth (38.14) and *mānava*, used very frequently in the sense of 'person,' and clearly distinguished as a category in contrast to animals, birds and insects in a passage just beyond the *Rājadharmaparvan* (149.14-22).

<sup>55</sup> Donnelly draws on 11.132 to make his claim, a verse which occurs in a section devoted to the expiation for sins, and prescribes the same penance for killing a *śūdra* as for killing various lowly animals. In light of the issue of rhetoric versus reality in different parts of the *Manusmṛiti*, briefly mentioned above, it should be noted that in the rather more prosaic context of listing penalties for vehicular accidents, the fine for killing any human (*manuṣya*), irrespective of social status, is double that for killing even the largest animals (8.296). For other examples of 'human' as a category distinguished from animals in the text see, for example: 1.43; 7.72; 8.98; 10.86.

<sup>56</sup> This is the passage that lists Greeks, Chinese, etc., ending the list with ... *mlecchās ca sarvaśaḥ / brahmaṣṭraprasūtās ca vaiśyāḥ śūdrās ca mānavāḥ*. I read the *mānavāḥ* as relating to the whole list: 'People who are Greeks, etc.... and *mlecchas* in their entirety, and the sons of brahmins and *kṣatriyas*, and *vaiśyas* and *śūdras*,' rather than as setting up any kind of distinction between 'mlecchas in their entirety' and 'men who are the sons of brahmins, etc.'. This is supported by the use of the word in relation to *dasyus* in v.23. Elsewhere, 67.32 also uses *mānava* for people 'anywhere on the Earth.'

<sup>57</sup> 65.17-22. The first three universal virtues listed in verse 20 – *ahiṃsā satyam akrodho* are identical to those identified as *sanātana* (along with *dāna* – generosity) in 13.147.22. The idea of *sanātana*- (eternal) or *mānava*- (human) *dharma* as a counterbalance to *varṇadharma* is important for contemporary attempts to reinterpret the *varṇa* system.

<sup>58</sup> Such as killing a non-combatant, touching another's wife, abducting women (131.15).

<sup>59</sup> See, for example: Pollock 1993; Lutgendorf 1995; Dalmia and von Stietencrom 1995.

<sup>60</sup> For more detailed discussion of these events see Basu 2015. Other articles in the same collection (Doniger and Nussbaum 2015) focus on the events from different angles.

<sup>61</sup> Modi, for example, citing his record of economic growth, declared that 'Real Raj Dharma is ensuring the welfare of everyone who lives in the state' (Express News Service: May 31, 2012). The Chief Minister of Bihar, meanwhile, to give an example of its critical use, was said to have taken 'a leaf from Mr. Modi's model

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of “rajdharm” (*The Hindu*: March 27, 2014) when police stood by while upper caste groups attacked *dalits* in Patna.

<sup>62</sup> Other points could be co-opted into Nationalist narratives too: those regarding the safety of women in the well-run ‘Hindu’ kingdom to support claims that India’s gender ills were introduced with medieval Muslim rule; those regarding *varṇa* the disavowal of abuses still defining the lived experience of many *dalits*. Even the very discussion of human rights in a Hindu context has been rendered murky by the way that ‘human rights’ are so often elided with ‘Hindu rights’ in Nationalist writings. For a discussion of some of these issues see Hasan 2015, as well as articles by Amartya Sen and Wendy Doniger in the same collection (Doniger and Nussbaum 2015).

<sup>63</sup> Descriptions also used to justify the rule of a strong king in a way reminiscent of Hobbes (a parallel that Das, amongst others, has noted: 2009, 243). For a good illustration of the contrast between these and normative governance see, for example, 68.14-35, where conditions in a country not properly ruled is immediately followed by those in one which is.

<sup>64</sup> Particularly with some of the accounts of violence against women: see, Human Rights Watch April 2002, Vol.14, No.3 (C). Tanika Sarkar’s discussion of gender violence in the riots concurs with this (Doniger and Nussbaum 2015, 291-4).

<sup>65</sup> For an interesting discussion of Hindu Nationalism and colonialism see Mehta 2011, 205-8.